
HOUSE BILL 3253

State of Washington

60th Legislature

2008 Regular Session

By Representative Grant

1 AN ACT Relating to overtime compensation; and amending RCW
2 49.46.130.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 49.46.130 and 1998 c 239 s 2 are each amended to read
5 as follows:

6 (1) Except as otherwise provided in this section, no employer shall
7 employ any of his employees for a work week longer than forty hours
8 unless such employee receives compensation for his employment in excess
9 of the hours above specified at a rate not less than one and one-half
10 times the regular rate at which he is employed.

11 (2) This section does not apply to:

12 (a) Any person exempted pursuant to RCW 49.46.010(5). The payment
13 of compensation or provision of compensatory time off in addition to a
14 salary shall not be a factor in determining whether a person is
15 exempted under RCW 49.46.010(5)(c);

16 (b) Employees who request compensating time off in lieu of overtime
17 pay;

18 (c) Any individual employed as a seaman whether or not the seaman
19 is employed on a vessel other than an American vessel;

1 (d) Seasonal employees who are employed at concessions and
2 recreational establishments at agricultural fairs, including those
3 seasonal employees employed by agricultural fairs, within the state
4 provided that the period of employment for any seasonal employee at any
5 or all agricultural fairs does not exceed fourteen working days a year;

6 (e) Any individual employed as a motion picture projectionist if
7 that employee is covered by a contract or collective bargaining
8 agreement which regulates hours of work and overtime pay;

9 (f) An individual employed as a truck or bus driver who is subject
10 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101
11 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system
12 under which the truck or bus driver is paid includes overtime pay,
13 reasonably equivalent to that required by this subsection, for working
14 longer than forty hours per week within the state of Washington;

15 (g) Any individual employed (i) on a farm, in the employ of any
16 person, in connection with the cultivation of the soil, or in
17 connection with raising or harvesting any agricultural or horticultural
18 commodity, including raising, shearing, feeding, caring for, training,
19 and management of livestock, bees, poultry, and furbearing animals and
20 wildlife, or in the employ of the owner or tenant or other operator of
21 a farm in connection with the operation, management, conservation,
22 improvement, or maintenance of such farm and its tools and equipment;
23 or (ii) in packing, packaging, grading, storing or delivering to
24 storage, or to market or to a carrier for transportation to market, any
25 agricultural or horticultural commodity; or (iii) commercial canning,
26 commercial freezing, or any other commercial processing, or with
27 respect to services performed in connection with the cultivation,
28 raising, harvesting, and processing of oysters or in connection with
29 any agricultural or horticultural commodity after its delivery to a
30 terminal market for distribution for consumption;

31 (h) Any industry in which federal law provides for an overtime
32 payment based on a work week other than forty hours. However, the
33 provisions of the federal law regarding overtime payment based on a
34 work week other than forty hours shall nevertheless apply to employees
35 covered by this section without regard to the existence of actual
36 federal jurisdiction over the industrial activity of the particular
37 employer within this state. For the purposes of this subsection,
38 "industry" means a trade, business, industry, or other activity, or

1 branch, or group thereof, in which individuals are gainfully employed
2 (section 3(h) of the Fair Labor Standards Act of 1938, as amended
3 (Public Law 93-259));

4 (i) Any hours worked by an employee of a carrier by air subject to
5 the provisions of subchapter II of the Railway Labor Act (45 U.S.C.
6 Sec. 181 et seq.), when such hours are voluntarily worked by the
7 employee pursuant to a shift-trading practice under which the employee
8 has the opportunity in the same or in other work weeks to reduce hours
9 worked by voluntarily offering a shift for trade or reassignment.

10 (3) No employer shall be deemed to have violated subsection (1) of
11 this section by employing any employee of a retail or service
12 establishment for a work week in excess of the applicable work week
13 specified in subsection (1) of this section if:

14 (a) The regular rate of pay of the employee is in excess of one and
15 one-half times the minimum hourly rate required under RCW 49.46.020;
16 and

17 (b) More than half of the employee's compensation for a
18 representative period, of not less than one month, represents
19 commissions on goods or services.

20 In determining the proportion of compensation representing
21 commissions, all earnings resulting from the application of a bona fide
22 commission rate is to be deemed commissions on goods or services
23 without regard to whether the computed commissions exceed the draw or
24 guarantee.

25 (4) No employer of commissioned salespeople primarily engaged in
26 the business of selling automobiles, trucks, recreational vessels,
27 recreational vessel trailers, recreational vehicle trailers,
28 recreational campers, manufactured housing, or farm implements to
29 ultimate purchasers shall violate subsection (1) of this section with
30 respect to such commissioned salespeople if the commissioned
31 salespeople are paid the greater of:

32 (a) Compensation at the hourly rate, which may not be less than the
33 rate required under RCW 49.46.020, for each hour worked up to forty
34 hours per week, and compensation of one and one-half times that hourly
35 rate for all hours worked over forty hours in one week; or

36 (b) A straight commission, a salary plus commission, or a salary
37 plus bonus applied to gross salary.

1 (5) No public agency shall be deemed to have violated subsection
2 (1) of this section with respect to the employment of any employee in
3 fire protection activities or any employee in law enforcement
4 activities (including security personnel in correctional institutions)
5 if: (a) In a work period of twenty-eight consecutive days the employee
6 receives for tours of duty which in the aggregate exceed two hundred
7 forty hours; or (b) in the case of such an employee to whom a work
8 period of at least seven but less than twenty-eight days applies, in
9 his or her work period the employee receives for tours of duty which in
10 the aggregate exceed a number of hours which bears the same ratio to
11 the number of consecutive days in his or her work period as two hundred
12 forty hours bears to twenty-eight days; compensation at a rate not less
13 than one and one-half times the regular rate at which he or she is
14 employed.

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